RECENT IMPORTANT DECISIONS.

BANKRUPTCY—JURISDICTION OVER PARTNERSHIP.—Pursuant to §5(c) of the Bankruptcy Act of 1898, providing that the court of bankruptcy which has jurisdiction of one member of a partnership may have jurisdiction of them all and of the administration of the partnership and individual property, *held* that a court having jurisdiction over one partner can take jurisdiction over the firm, without reference to whether the partnership is six months old, and whether there is any specific allegation as to the firm's principal place of business. *In Re Mitchell,* 219 Fed. 690.

The instant case seems to leave little room to doubt that the existence of the partnership, as an entity, for any considerable period prior to bankruptcy, is not necessary to confer jurisdiction, provided, meanwhile, at least one partner has resided within the jurisdictional limits for at least three months. Nor is it of any consequence that the business of the firm was carried on in another state or district or that the other partners reside in distant states. *Ex Parte Hall,* Fed. Cas. 5919; *In Re Penn,* Fed. Cas. 10927; *Whitson* v. *Farber Bank,* 105 Mo. App. 605. But if the petition is distinctly based on the ground of residence or domicile, it cannot be supported, if the court be convinced that none of the members of the firm had been domiciled within the district for a sufficient period. *In Re Blair,* 99 Fed. 76. But if the principal place of business of a partnership has been within a given district for the requisite length of time, the bankruptcy court sitting in that district will have jurisdiction of a voluntary or involuntary petition against the partnership irrespective of the fact that some of the partners may be non-residents. *Cameron* v. *Canieo,* Fed. Cas. 2340. And where the partnership has had its only place of business within a given judicial district for a period of more than three months before the filing of a petition in bankruptcy against it in such district, the court therein will have jurisdiction of the petition although during a part of that time, the only business carried on was that in the way of winding up the affairs of the firm by two of the partners, the others having withdrawn and retired. *In Re Blair,* 99 Fed. 76.

BILLS AND NOTES—FRAUD IN ESSE CONTRACTUS.—Action on a promissory note against the maker, by an indorsee for value before maturity. Plaintiff alleged the note was given to the payee, an attorney, for legal services in divorce proceedings. Defendant alleged in defense that she had, while in poor health and affected by eye trouble, signed the note under the belief induced by the payee that she was signing the divorce petition. *Held,* it was error to direct a verdict for the plaintiff and not to submit to the jury an issue of fraud *in esse contractus;* for if defendant without fault signed a note, being induced to believe it was an instrument of another character, she was not liable. *First Nat. Bank of Shenandoah* v. *Hall,* (Iowa 1915), 151 N. W. 120.

A person cannot be made a party to a contract without his consent, in the absence of negligence. So fraud or misrepresentation in the making of

a contract, such as to secure liability on an obligation not knowingly assumed by the party, will constitute a defense. This is termed fraud *in esse contractus.* Thus signatures to promissory notes have been secured by misrepresentation of a duplicate agency contract, or by concealing a note in a contract and later clipping out the note and signature, or by misreading an instrument to a person entitled to rely upon the reading, or by a substitution of one instrument for another. Notes so secured cannot be recovered upon, even by a holder in due course. *Kagel* v. *Totten,* 59 Md. 447; *Green* v. *Wilkie,* 98 Iowa 74, 66 N. W. 1046; *Eldorado Jewelry Co.* v. *Darnell,* 135 Iowa 555, 113 N. W. 344; *Brown* v. *Reed,* 79 Pa. St. 370; *Porter* v. *Hardy,* 10 N. D. 551, 88 N. W. 458. On the other hand, fraud in the inducement—that is, inducing a person to make a note, upon fraudulent representations as to collateral matters or as to the legal effect of the note—is not a defense to an action by a holder in due course. *Taylor* v. *Gribb,* 100 Ga. 94; *David* v. *Merchants Bank,* 103 Ky. 586; *Beath* v. *Chapoton,* 115 Mich. 506. There the maker really intended to sign, and the concealed conditions would not affect an innocent purchaser of the note. Thus, in *Jackson* v. *Chemical Bank,* 46 S. W. 295, the signing was induced under a promise that the note would not be put in circulation. Where the fraud is *in esse contractus* the defense is not available if the maker was negligent in ascertaining the nature of the instrument or its terms. *Douglass* v. *Matting,* 29 Iowa 498; *Gibbs* v. *Linabury,* 22 Mich. 479; *Williams* v. *Stoll,* 79 Ind. 80. In the instant case defendant was in poor health and suffering from eye trouble. That alone should not excuse the signing. Mere failure to read the note is insufficient. *Yeomans* v. *Lane,* 101 Ill. App. 228; *Graham* v. *Insurance Co.,* 110 Mo. App. 95; *Ort* v. *Fowler,* 31 Kan. 478; *Chapman* v. *Ross,* 56 N. Y. 137. Where a person is unable to read he should request assistance from others present who can read, and failure to do so may defeat the defense. *Brown* v. *Feldwert,* 46 Ore. 363; *Shores Co.* v. *Lonning,* 159 Iowa 95, 140 N. W. 197. But if the relation of the parties is such that the maker is entitled to repose confidence in the person making the representation, then a failure to call other persons present may not prejudice the defense. So in the instant case the fact that the two sons of the defendant were present in the room when the instrument was signed, and that they were not called to read or see the instrument believed to be a divorce petition, would not in itself be negligence. The relation of attorney and client coupled with the temporary disability of the client is a more weighty consideration.

BILLS AND NOTES—RECOVERY OF MONEY PAID BY THE SECRETARY OF THE TREASURY ON FORGED DRAFT.—Action by the United States to recover the amount of a draft paid by the Secretary of the Treasury to Defendant Bank. The draft was dated in the Argentine Republic, and apparently signed by Crane, the American Consul, whose signature had been forged. Defendant was the holder in due course, and was paid the amount of the draft under a mistake of fact,—both parties being ignorant of the forgery. *Held,* the United States cannot recover the money paid. *United States* v. *Bank of New York,* (Cir. Ct. App., second circuit, 1914), 219 Fed. 648.